

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9618 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

AKHIL GUJARAT GENERAL MAZDOOR SANGH

Versus

PIOMA INDUSTRIES

Appearance:

MR S,B. VAKIL, Advocate, for Petitioner.
MR J.D. AJMERA, Additional Central
Government Standing Counsel, for Respondent No. 1.
MR D.G. CHAUHAN, Advocate, for Respondent no.2.

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/04/96

ORAL JUDGEMENT

Rule. Mr. J.D. Ajmera, Learned Additional Central Government Standing Counsel, waive service of notice of Rule for the respondent no.1. Mr. D.G. Chauhan, Learned Advocate, waives service of notice of rule for respondent no.2.

2. By way of this Special Civil Application the petitioners seek direction to quash the order dated 7-7-1993 passed by the Central Government u/s 19-A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (Hereinafter referred to as the Act of 1952), whereby the matter was remitted to the Regional Provident Fund Commissioner, Ahmedabad with the direction to initiate proceedings u/s 7-A of the Act 1952 and to determine whether the petitioners' establishment is in continuation of Imperial Soda Factory and Pioma Industries or a new establishment. The petitioner has also been given liberty to file their representation u/s 19-A of the Act of 1952 if they are not satisfied with the order of the respondent no.2.

3. The facts of the case in short are that Azeez Pirojsha Khambhata, the owner and proprietor of the Trade Mark Rasna established a factory at Ahmedabad in the year 1917. It was known as an Imperial Soda Factory and Pioma Industries. The said establishment was manufacturing food flavours and soft drink concentrates powder and liquid which products were used in preparation of soft drinks candies, jellies, bakeries, pharmaceuticals etc. The said establishment was informed under the letter dated 24-5-19979 that the provisions of the Act of 1952 were applicable to them with effect from 1978 under the Schedule head, "Aerated water..." They were also allotted Fude Code No.GJ/2916. They were also directed to report compliance with effect from 1-3-1978. The employer establishment disputed applicability mainly on the ground that they were not manufacturing "Aerated water" or soft drinks and as such they are not covered under the Schedule. It was stated that their products are food, flavour and soft drink concentrates that the same could not be directly consumed as "Aerated water." Thus, the inquiry was commenced u/s 7-A of the Act of 1952.

4. After hearing the representatives of the petitioners, Respondent no.2 over ruled the objections and ordered that the establishment be treated as finally covered. It appears that the petitioners filed a representation dated 15-9-1979 u/s 19-A of the Act of 1952 before the Central Government. Those proceedings were dismissed as withdrawn by the order dated 16-9-1980 in view of the letter of the said establishment dated 15-8-1980 stating that they have agreed to implement the provisions of the Act of 1952 and they are withdrawing their representation. In the year 1984, the respondent Department received a complaint from Gujarat Majdoor Panchayat that the Company was situated at Asarava, Ahmedabad and all the workmen were covered by the Act and

deductions were made regularly. However, subsequently the Company shifted its premises from Asharava, Ahmedabad to Kalol and stopped Provident Fund deductions. It was also stated that the workmen at Asharva, were transferred to Kalol. The notice was given to the petitioners' establishment and the inquiry commenced. The Regional Provident Fund Commissioner arrived at the conclusion that the Kalol establishment was owned by "Khambhata Family Trust", whereas that at Asharva was a proprietary concerned of Shri A.K. Khambhata and the said changes were effective from 1-9-1982. It was noticed that there was no substantial alterations particularly with reference to the product manufactured and sold. Shri Khambhata signed one trade mark copy right licence agreement with the Khambhata Family Trust on 12-1-1984. It was further noticed that in the family trust Shri Khambhata remained as an active person in the business. The petitioner claimed infancy protection u/s 16(1)(b) of the Act of 1952. It was contended that the provisions of the Act of 1952 cannot be applied to Kalol Establishment till completion of five years from the date of set up at Kalol. This contention was rejected considering Kalol establishment as part and parcel of the main establishment at Ahmedabad. Being aggrieved by the order of the respondent no.2 the petitioner filed representation before the Central Government on 4-12-1989 under the provisions of Section 19-A of the Act of 1952. During the pendency of the said representation before the Central Government, the petitioner also approached this Court by way of filing writ petition which was numbered as Special Civil Application No.4735 of 1990. The Division Bench of this Court by the order dated 20-11-1992 directed the Central Government to decide the petitioner's representation latest by 31-1-1993.

5. The Central Government found that the Respondent Regional Provident Fund Commissioner under the communication dated 18-11-1988 Annexure 'E' informed that the establishment shall not be deemed to be a new set up by merely change of its location, but in subsequent communication dated 27-10-1989 informed that the establishment is a new set up and again in reply submitted before the Central Government took the stand that the order dated 27-10-1989 was no-speaking order and it is the result of suppression of material facts. In view of this conflicting stand, in the opinion of the Central Government, the question as to "Whether the petitioner establishment is in continuation with the previous establishment i.e. Imperial Soda Factory" has not been properly objected in quasi judicial proceeding u/s 7-A of the Act of 1952. It is contended that by Mr.

S.B. Vakil, learned Counsel appearing for the petitioner that a doubt was raised with respect to applicability of the provisions of the Act to the petitioner's establishment, as such it was the duty of the central government u/s 19-A of the Act of 1952 to adjudicate upon the issue raised in order to remove the doubt or difficulty. The Central Government in remitting the matter to Second Respondent has acted contrary to law, and in substance and effect failed to exercise the jurisdiction u/s 19-A of the Act of 1952. It is further submitted that the first respondent has in fact disobeyed the direction of this Court by not deciding the issue on merit.

6. Section 19-A of the Act of 1952 has been substituted by Section 22, by amending the Act No.33/88. However, Mr. Ajmera, learned Additional Central Government Standing Counsel informs that the Amending provisions have not come into force, as such Section 19-A of the Act of 1952, has to be read as it stood which reads as under.

"Sec.19-A:-Power to remove difficulties-

If any difficulty arises in giving effect
to the provisions of this Act, and in particular,
if any doubt arises as to -

- (i) whether an establishment which is a
factory, is engaged in any industry
specified in Schedule ?;
- (ii) whether any particular establishment is
an establishment falling within the class
of establishments to which this Act
applies by virtue of a notification under
clause (b) or sub-section (3) of Section
1; or
- (iii) the number of persons employed in an
establishment; or
- (iv) the number of years which have elapsed
from the date on which an establishment
has been set up; or
- (v) whether the total quantum of benefit to
which an employee is entitled has been
reduced by the employer;

The Central Government may, by orders, make such

provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final."

Thus, Section 19-A of the Act of 1952, the Central Government to remove the doubt or difficulty, which may arise in giving effect to the provisions of the Act. The direction u/s 19-A can be given only where the authority is in doubt or difficulty. In a case where authority has failed to examine the issue in a proper manner, no question of doubt or difficulty arises. Obviously if authority properly applies its mind to the issue in a proper and judicious manner, there may not be any difficulty or doubt, and so there may not be any occasion for the Central Government to invoke its powers of removing doubt or difficulty u/s 19-A of the Act of 1952. In the present case, second respondent under letter dated 16th August 1988 considering the fact that the factory had been shifted from Asharva to Kalol in the year 1983 or so and transferred the workmen employed at Asharva to Kalol, informed the petitioner that the establishment shall not be deemed to be a new set up by merely its change of location and factory would continue to be covered under the Act of 1952. However, in letter dated 27-10-1989 second respondent conveyed the decision that the petitioner is a new establishment. Again in the written submission before the Central Government it was submitted that letter dated 27-10-1989 was not a speaking order and it was the result of suppression of some material facts. On these facts first respondent was justified in remitting the matter to second respondent as the said authority failed to appreciate the issue for determination in a proper manner, and as such there could be no doubt or difficulty and as such no premises for removing any doubt or difficulty u/s 19-A of the Act of 1952. So far as the second limb of the contention that first respondent disobeyed the directions of this Court, in not determining the issue is concerned, in my view there is no substance. This court only directed the first respondent to decide the representation dated December 4, 1989 made by the petitioners latest by January 31, 1993. For delay in deciding the matter has been explained in para 6 of the order dated 7-7-1993. The direction to decide the matter before the specified date cannot be construed as that the representation could be decided only by answering the issue raised. The contention is totally misplaced. The decision of authority to return the reference or representation, for

any justified reason is a decision. Thus, the impugned direction of the Central Government dated 7-7-1993 remitting the matter to second respondent for proper determination of the issue is a decision and as such it cannot be complained of that there is a disobedience of the direction of the order of this Court.

7. Mr. Chauhan, Learned Advocate, appearing for Akhil Gujarat Central Mazdoor Sangh, who has been allowed to intervene in the matter, submits that inspite of the fact that the provisions of the Act of 1952 were made applicable to the petitioner - Establishment way back in the year 1979 by using its dilatory tactics somehow it is avoiding to contribute to the employees provident fund on account of which large number of employees have been suffering for last number of years. He submits that in view of this, direction may be given to the respondent no.2 to complete inquiry u/s 7-A of the Act of 1952 within time bound programme.

8. The Central Government took unnecessary long 4 years in deciding the matter u/s 19-A of the Act of 1952. After impugned order was passed on 7-7-93, second respondent issued a notice u/s 7-A of the Act of 1952 on 1-9-1993, but there is no progress in the said proceedings, inspite of the fact that there is no stay of proceedings by this Court. Simply because a writ petition has been filed and notice has been issued thereon by the High Court, will not ipso-facto stay proceedings, unless there is stay of proceedings by an order of the court and same has been continued. It is the responsibility of the party to produce the order of the Court staying proceedings. Before this Court also, the petition was filed in the year 1993, after notice, it was last adjourned to 15-2-1993. After 3 years the matter appeared on admission board on 27-3-1996. Thus, in the facts of the case, it is expedient to give direction to second respondent for expeditious proceedings u/s 7-A of the Act. By the impugned order the Central Government has given liberty to file a fresh application u/s 19-A of the Act of 1952 if not satisfied with the order of the respondent and if so advised. In my view, the liberty given is uncalled for. Such liberty is likely to further delay the finality of the decision. Simply because a party is dissatisfied by the decision of the authority u/s 7-A of the Act of 1952 will not give jurisdiction to the Central Government u/s 19-A of the Act of 1952. The provision of Section 19-A of the Act cannot be equated with remedy of appeal or revision. The provision of Section 19-A of the Act of 1952 can be invoked only when there is necessity to remove doubt or

difficulty. Mr. Ajmera, submits that there was no necessity of giving liberty to approach the Central Government in case of dissatisfaction of the order of the Second Respondent.

9. In view of the above, this Special Civil Application is partly allowed and the impugned order dated 7-7-1993 passed by First Respondent is modified to the extent that the order giving liberty to the petitioner to file afresh petition u/s 19-A of the Act of 1952, in case he is not satisfied with the order of the respondent is quashed and set aside. It is directed that the petitioner or its representative shall appear before the Second Respondent on 18-4-1996. The Second Respondent shall decide the proceedings u/s 7-A 1952 expeditiously within a period of 3 months from today.

10. Rule is made absolute to the aforesaid extent only. No order as to cost. Direct Service permitted.

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